

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND  
(Southern Division)

D.H. PORTER ENTERPRISES, LLC,  
d/b/a Staffing Etc.,

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*Plaintiff / Counter-Defendant,*

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v.

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Case No.: 8:23-cv-02069 AAQ

MARCELLUS MCKINLEY,

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*Defendant / Counter Plaintiff.*

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MOTION TO DISMISS OR FOR MORE DEFINITE STATEMENT

Plaintiff, D.H. Porter Enterprises, LLC, d/b/a Staffing Etc. (“D.H. Porter”), by and through its attorneys, Ronald H. Jarashow, Lucas Van Deusen, and BOWMAN JARASHOW LAW LLC, pursuant to Fed. R. Civ. Pro. 12, hereby files this Motion to Dismiss or for More Definite Statement against Defendant, Marcellus McKinley (“McKinley”), and for grounds states:

1. On August 21, 2023, McKinley filed a “counterclaim” asserting claims jointly against Plaintiff and new third-parties. The third parties, stated as Staffing Plus Unlimited, Inc., David Porter, and Hope Porter, are not plaintiffs in the Amended Complaint and must be considered third-party defendants.

2. Based on McKinley’s group pleading against all “counterclaim defendants”, D.H. Porter is unable to determine which allegations specifically relate to D.H. Porter versus the other named “parties.” As stated in this motion, the other parties are improperly included in the McKinley’s “counterclaim.” Until an amended counterclaim is filed

specifying the allegations against D.H. Porter, Plaintiff is unable to distinguish the allegations against D.H. Porter and answer the counterclaim.

3. Defendant cannot assert a “counterclaim” against new third parties pursuant to Fed. R. Civ. Pro. 13 and 14.

4. Rule 13(a)(1) requires that McKinley only assert a counterclaim “against an opposing party.”

5. McKinley must name Staffing Plus Unlimited, Inc., David Porter, and Hope Porter in a third-party complaint.

6. On September 5, 2023, undersigned counsel wrote to McKinley’s counsel requesting that McKinley amend the “counterclaim” to remove Staffing Plus Unlimited, Inc., David Porter, and Hope Porter as “counterclaim defendants.” On that day, McKinley’s counsel responded that they will file an amended pleading.

7. Therefore, it is appropriate to defer Plaintiff’s response to the “counterclaim” until after an amended counterclaim is filed.

WHEREFORE, Plaintiff, D.H. Porter Enterprises, LLC, d/b/a Staffing Etc., respectfully requests that this Honorable Court:

- A. Grant this Motion to Dismiss with leave to amend; or, alternatively
- B. Grant this Motion for More Definite Statement, requiring Plaintiff, Marcellus McKinley, to file the amended pleading within fourteen (14) days of the Court’s Order; and
- C. Grant such other and further relief as this Court deems appropriate.

Date: September 11, 2023

/s/ Ronald H. Jarashow

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/s/ Lucas Van Deusen

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*Attorneys for Plaintiff,  
D.H. Porter Enterprises, LLC, d/b/a Staffing Etc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the date next to the signature below, a true and accurate copy of the foregoing was delivered through the court's e-filing system to:

Gregg C. Greenberg  
Zipin, Amster & Greenberg, LLC  
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ggreenberg@zagfirm.com

*Attorneys for Defendant / Counter-Plaintiff,  
Marcellus McKinley*

Date: September 11, 2023

/s/ Ronald H. Jarashow

Ronald H. Jarashow